IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RFA No. 24 of 1999.

Judgement reserved on: 25.7.2007.

Date of decision: 11.9.2007.

Baldev Singh ….. Appellant.

Vs.

National Hydro Electric Power Corporation & ors. …. Respondents.

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the Appellant : Mr. Jagan Nath, Advocate vice Mr. Anand Sharma, Advocate.

For the Respondents : Mr. Rajnish Maniktala, Advocate, vice counsel for respondent No.1.

Mr. M.S. Chandel, Advocate General with Mr. M.L.Chauhan, Addl. Advocate General, for respondents No. 2 and 3.

Ms. Devyani Sharma, Advocate, vice counsel for respondents No. 4 and 5.

Kuldip Singh, Judge.

This appeal has arisen out of award, dated 22.12.1998, passed by learned District Judge, Chamba in LAC No. 43 of 1993. The parties are referred in the same manner as in the court below.

2. The brief facts of the case are that petitioner claimed himself to be the owner of one house and one cowshed, situate on land comprised in khasra No. 632, village Palehi, which was acquired

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Whether the reporters of the local papers may be allowed to see the Judgment?

by the State of Himachal Pradesh for construction of Chamera Dam Reservoir in the year 1992. Notification, under Section 4 of the Land Acquisition Act was published on 13.6.1992 and Land Acquisition Collector (for short, the Collector) announced the award on 25.6.1993. The Collector had awarded Rs. 1,10,451 compensation on account of market value of the house, but no compensation was awarded for the cowshed.

3. The petitioner has submitted that the Collector had announced the award, but no compensation was paid to him, rather the compensation was paid to respondents No. 4 and 5. The petitioner filed Reference Petition, under Sections 18 and 30 of the Act before the Collector. He has submitted that house was constructed by him in the year 1980-81 and respondents No. 4 and 5 have no right in the said house and as such petitioner only is entitled to the compensation awarded for the acquisition of the house. He has also submitted that the market value of the house has not been properly assessed by the Collector and as such the petitioner is entitled to enhancement of compensation for acquiring the house.

4. The respondents contested the claim of the petitioner. National Hydro Electric Power Corporation (for short, the Corporation) and State of H.P. have stated that market value of the house has been correctly assessed and petitioner is not entitled to enhancement of compensation. The respondents No. 4 and 5 have submitted that petitioner has nothing to do with the house. In fact, the house in question belonged to late Siridhar, who was maternal grand father of respondents No. 4 and 5 and the property of late Siridhar including

house, in question, was inherited by respondents No. 4 and 5. Respondents No. 4 and 5 denied the claim of the petitioner and they did not claim enhancement of compensation.

5. The learned District Judge, vide impugned award, has held that the house, in question, belonged to Siridhar and respondents No. 4 and 5 inherited the same after the death of Siridhar and these respondents were owners of the said house at the time of its acquisition. The learned District Judge has dismissed the reference petition. The petitioner is thus in appeal.

6. I have heard the learned counsel for the parties and gone through the record. The learned counsel for the petitioner has submitted that learned District Judge has misconstrued and misinterpreted the evidence on record. The house, in question, was constructed by the petitioner and he was the owner of the house at the time of its acquisition. The counsel representing the respondents have supported the impugned award.

7. PW 1 Partap Chand, Assistant Engineer, Chamera Project has proved the Photostat copy of site plan Ex. P-1 and Photostat copy of estimate Ex. P-2 of the acquired house. PW 2 Baldev Singh, petitioner has stated that he started the construction of the house in the year 1980-81 and completed it in the year 1985. The compensation of the house was not given to him. In cross-examination, he has stated that the land, on which the house was constructed, was Abadi Deh, bearing khasra No. 632. He has stated that he had no documentary proof that he was in possession of land comprised in khasra No. 632. He has stated that in khasra No. 632,

he had two houses. He has shown his ignorance that on the Abadi land Siridhar was also having a house, which consisted of three rooms in the ground floor and three rooms in the upper storey. He has admitted that Prithi Chand and Haizmo are the son and daughter of the daughter of Siridhar. He had filed civil suit regarding the property of Siridhar on the basis of will of Siridhar, but that suit was dismissed and appeal filed by him was also dismissed. He did not produce any documentary evidence with regard to construction of house in question. He has admitted that he has received the compensation of the house, which was owned by his father, but stated that he did not receive any compensation of the house, which was constructed by him.

8. PW 3 Molla Buksh has stated that he had seen two houses of Baldev Singh, new house was constructed ten years ago. The statement of this witness was recorded on 8.9.1995. In cross-examination, he has admitted that Siridhar had house in Abadi Deh of village Palehi. He has stated that he worked as labourer in the new house constructed by Baldev.

9. PW 4 Chaman Singh has stated that new house was constructed by Baldev Singh. He has admitted that respondents No. 4 and 5 are the successors of Siridhar. PW 5 Raj Singh has placed on record photographs Ex. PW 5/A to Ex. PW 5/F and negatives Ex. PW 5/G to Ex. PW 5/L of the house, in question. The counsel for the petitioner has tendered in evidence Ex. P-3 copy of judgement, Ex. P-4 copy of decree, mark-A copy of plaint and mark-B, copy of written statement.

10. PW 6 Gurcharan Dass Office Kanungo (LAO) Chamera has produced Ex. PW 6/A to Ex. PW 6/H and Ex. PW 6/J to Ex. PW 6/N. PW 7 Jalo Ram has proved Ex. PW 6/J, Ex. PW 6/H, Ex. PW 6/H-1 and Ex. PW 6/H-2. All these documents are copies of record concerning acquisition of house and cowshed etc. These documents do not connect the title of house and cowshed in question with the petitioner. It is the stand of the petitioner that he has already got the compensation of one house, which was constructed by his father.

11. PW 8 Pawan Kumar has stated that earlier they were residing in village Palehi Abadi Deh, bearing khasra No. 632. In that Abadi Deh, he was having one house. In the year 1983, Baldev Singh petitioner constructed a two storied house there. In cross-examination, he has shown his ignorance whether Siridhar had land in village Palehi.

12. RW 1 Prithi Singh has stated that Siridhar was his real maternal grand father. He owned house, cowshed and land in village Palehi. The house was in Abadi Deh, bearing khasra No. 632. The house consisted of three rooms in the ground floor and three rooms in the upper storey. On the death of Siridhar, his property came to Gauri Devi widow, as well as to him and his sister Haizmo Devi. The civil suit regarding the estate of Siridhar, which Baldev Singh petitioner claimed on the basis of will, was decided against the petitioner. The petitioner filed an appeal, which was also dismissed.

13. RW 2 Subhash Chand, English Clerk, District Court, Chamba has proved Ex. R-3 and Ex. R-4, statements of Amar Nath and Bajiru from the record of Civil Suit No. 3 of 1989, titled as Baldev

Singh vs. Prithi Singh. RW 3 Narsingh Dass has stated that he was Vice-President of Chaklu Panchayat, Siridhar was having house and cowshed in village Palehi. The house consisted of three rooms each in the ground floor and first floor, which was owned by Prithi Singh and Haizmo Devi. The respondents No. 1 to 3 did not produce any evidence.

14. The question is whether Siridhar was having house in Abadi Deh land bearing khasra No. 632, in village Palehi. It has been established on record that respondents No. 4 and 5 are the successors of Siridhar. PW 2 Baldev Singh petitioner in his statement has stated that he had two houses on khasra No. 632, one house was of his uncle (Taya) Gulabu and another house was owned by his another uncle (Taya) Sobhia Ram. He has shown his ignorance that in Abadi Deh, Siridhar was having house consisting of three rooms in ground floor and three rooms in upper storey. PW 3 Molla Baksh has admitted that in Abadi Deh of village Palehi, Siridhar was having a house, but according to him, that house was given by Siridhar to Rajmal, but nothing has been placed on record that in fact Siridhar has transferred the house owned by him in Abadi Deh of village Palehi in favour of Rajmal. The respondent No.4 while appearing as RW 1 has specifically stated that his maternal grand father Siridhar was owner in possession of house, cowshed and land in village Palehi and house in Abadi Deh. This has been supported by RW 3 Narsingh, former Vice President of Gram Panchayat, Chaklu. He has stated that Siridhar had house and cowshed in village Palehi, which was later on owned by respondents Prithi Singh and Haizmo Devi.

15. The petitioner claimed the property of Siridhar on the basis of will Ex. P-1 in civil suit and a copy of which has been placed on record of this case also. The suit filed by the petitioner was dismissed on 27.7.1990 by learned Sub Judge 3rd Class, Chamba vide Ex. P-3. The petitioner filed an appeal, which was dismissed by the learned District Judge, Chamba on 30.9.1991, vide Ex. R-1. The courts, vide judgements, Ex. P-1 and Ex. R-1, rejected the claim of the petitioner on the basis of will Ex. P-1. The petitioner claimed that will Ex.P-1 was executed in favour of his father Moti Ram. In Ex. P-1 some properties including a house were allegedly given by Siridhar to Moti Ram, father of the petitioner. The will Ex. P-1 was not accepted by the courts, but fact remains that in Ex. P-1, there is a reference of house owned by Siridhar. This also indicates that Siridhar was owner of a house alongwith other properties. The petitioner has not explained where the house of Siridhar, which has been mentioned in Ex. P-1, has gone.

16. The petitioner has not placed anything on record to show that house, in question, was owned and possessed by him at the time of acquisition or he constructed the said house before the acquisition. The documents Ex. PW 6/A to Ex. PW 6/H, Ex. PW 6/J to Ex. PW 6/N, Ex. PW 6/H-1 and Ex. PW 6/H-2 do not espouse the case of the petitioner. Most of these documents were prepared during acquisition proceedings. The fact cannot be ignored that the petitioner was working as driver with respondent No.1 at the time of acquisition proceedings and possibly for these reasons, these documents were prepared in his favour. In any case, these

documents do not prove the title of petitioner on the house and cowshed, in question, nor these documents connect the petitioner with the house and cowshed, in question. The possibility also cannot be ruled out that these documents pertain to another house of the petitioner, which was acquired and compensation was paid to him by the authorities. There is no dispute with respect to that house. It is strange that petitioner allegedly constructed the house, in question, but he could not produce even a single document to show the expenses incurred by him for constructing the said house.

17. The learned District Judge has considered the material on record and has rightly come to the conclusion that the house in question was owned and possessed by Siridhar and at the time of acquisition of the house it was owned by respondents No. 4 and 5. Once it is held that petitioner has failed to prove his right, title or interest in the house, then he is not entitled to enhancement of compensation. But even otherwise, nothing has been placed on record except for the bald statement of the petitioner that compensation awarded by the Collector is insufficient. This aspect has also been considered by the learned District Judge rightly. The respondents No. 4 and 5 owners of the house have not assailed the quantum of compensation awarded by the Collector. The learned counsel for the petitioner has failed to make out any case for interference.

18. The result of the above discussion, the present appeal, being RFA No. 24 of 1999, is dismissed.

September 11, 2007. **(Kuldip Singh)**
(*Hem*) **Judge.**